

PLAINTIFFS' EXHIBIT 19 TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

G., a 12-year-old minor)
suing by a fictitious name)
for privacy reasons. Mother)
and Father suing under)
fictitious names to protect)
the identity and privacy)
of G., their minor child,)
Plaintiffs,)

vs.) Case No. 15cv40116-TSH

The Fay School, by and)
through its Board of)
Trustees, and Robert)
Gustavson,)
Defendants.)

BEFORE: The Honorable Timothy S. Hillman

Daubert Motion Hearing
Day 3

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
July 28, 2016

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PLAINTIFFS' EXHIBIT 19 TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENTI N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jeanne Hubbuch, M.D.				
By Mr. Markham	6			
By Ms. McKean		104		
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1 Q. All right. And are you currently treating patients that
2 you have diagnosed as EHS?

3 A. Yes.

4 Q. What is the basic treatment that you give those patients?
11:24:30AM 5 Is there one size fits all? What do you do?

6 A. No, there isn't one size fits all, and there's no specific
7 treatment other than avoidance. Avoidance really is the key
8 here right now. And often if they meet exposure, whether it's
9 either in the office, the school, or home is greatly decreased,
11:24:53AM 10 they often will tolerate smaller exposures without symptoms.

11 Q. Okay. Now, are you aware that in relation to all of this
12 inquiry on the son he was given an MRI?

13 A. Yes.

14 Q. What's an MRI?

11:25:13AM 15 A. It's a magnetic test of the -- of a part of the body that
16 can really show the physical structures.

17 Q. Beneath the skin?

18 A. Correct.

19 Q. What is your understanding of the difference between -- of
11:25:27AM 20 the difference between EMF radiation that comes from WI-FI and
21 the magnetic radiation that comes from an MRI?

22 A. My understanding is that they are quite different. The
23 MRI is primarily magnetic energy, not primarily electromagnetic
24 frequency.

11:25:46AM 25 Q. Okay.

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1 A. There may be some frequencies associated with it, but it's
2 not primarily.

3 Q. In any event, can you compare the length, the duration of
4 an MRI to five days a week, six hours a day in a school?

11:26:00AM 5 A. No, again here you're talking about a much shorter
6 duration in time.

7 Q. All right. And you made note of the fact that the MRI
8 results on the son came back negative; correct?

9 A. That's right.

11:26:11AM 10 Q. So you were aware that he had been exposed to an MRI;
11 correct?

12 A. I was.

13 Q. Did that alter your opinion about the source of his
14 symptoms?

11:26:21AM 15 A. Well, it -- again, it helped rule out that there was
16 another cause for it.

17 Q. What causes were you looking for, by the way, by the MRI?

18 A. The MRI you're really looking for structural problems. So
19 a brain tumor or mass, or something else that would be a
11:26:37AM 20 structural issue.

21 Q. All right. By the way, at some point in his history at
22 the school the son had a sledding accident and hit his head.

23 You're aware of that now?

24 A. Yes.

11:26:49AM 25 Q. And you didn't -- you weren't aware of that before;

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1 correct?

2 A. I was not.

3 Q. Does that have any bearing -- well, what bearing does that
4 sledding incident have on the headaches that he got over the
11:27:01AM 5 course of the two and a half years we're talking about?

6 A. They certainly started before the sledding accident, and I
7 didn't see where the sledding accident appreciably changed the
8 pattern.

9 Q. And that sledding accident was before he returned to
11:27:18AM 10 school in the seventh grade; correct?

11 A. I don't recall specifically when it was.

12 Q. Okay. All right. Take a look at Tab 4 of Exhibit 1.

13 This is a note from Dr. Ostrovsky, Marvin, M.D., of a visit
14 that he had with the son, and it looks like this took place in
11:28:11AM 15 May of 2014; correct?

16 A. Yes. Yes.

17 Q. That's before the time that the mother got in contact with
18 you, which was in June by email; correct?

19 A. Right.

11:28:19AM 20 Q. All right. Did you see this note before you gave your
21 initial letter?

22 A. I'm not sure that I did.

23 Q. Okay. And in this note, it says -- it recites his
24 symptoms, does it not?

11:28:41AM 25 A. Yes.

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1 Q. What does it say the symptoms are?

2 THE COURT: What is that tab?

3 MR. MARKHAM: It's Tab 4, your Honor --

4 THE COURT: Thank you.

11:28:55AM 5 MR. MARKHAM: -- of Exhibit 1.

6 THE COURT: Got it.

7 THE WITNESS: Can you just show me where that is.

8 MR. MARKHAM: I'm looking for it. I had it marked.

9 I'm sorry. I apologize.

11:29:11AM 10 BY MR. MARKHAM:

11 Q. Take a look on your screen. I'm circling it.

12 Do you see it?

13 A. Yes.

14 Q. Okay. Patient is having symptoms of chest pressure and
11:29:28AM 15 stomach pain?

16 A. Yes.

17 Q. All right. Are those the symptoms that were reported to
18 you?

19 A. They are some of the symptoms.

11:29:35AM 20 Q. Stomach pain?

21 A. More nausea than stomach pain.

22 Q. Okay. But those are not the symptoms that were reported
23 to you in July; correct?

24 A. No.

11:29:45AM 25 Q. And do you know anything about Dr. Ostrovsky's specialty?

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1 A. I believe he's a pediatrician.

2 Q. All right. Now, he indicates that he cannot support that
3 WI-FI is the cause of the stomach and chest issues.

4 Do you see that?

11:30:08AM 5 A. Yes.

6 Q. You were criticized for not looking at that before you
7 wrote a letter about this.

8 Can you respond to that criticism. Should you have
9 looked at that and considered it?

11:30:28AM 10 A. I don't think that that really would have anything to do
11 with changing my opinion. I -- I base my opinion on my
12 experience with environmental medicine and looking at his
13 pattern of symptomatology, and I don't think that someone else
14 saying they can't -- they don't understand EHS and couldn't
11:30:49AM 15 support it means that it doesn't exist.

16 Q. All right. Okay. Take a look at Tab 6.

17 These are your notes; correct?

18 A. Yes. Yes.

19 Q. In your notes you say that -- Tab 6, Exhibit 1, you say
11:31:16AM 20 that if WI-FI it should exist all day. Can you find that
21 reference.

22 A. Yes.

23 Q. Okay. Dr. Boyer criticized you as giving a diagnosis in
24 that phraseology, inconsistent with EMF, because if WI-FI
11:31:36AM 25 should persist all day.

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1 Could you explain why you said that and still
2 adhere -- that it should exist all day and still adhere to your
3 opinion that the probable cause of his condition is WI-FI at
4 Fay.

11:31:49AM 5 A. Yes. In the early stages of a sensitivity via to EHS or a
6 chemical or some other type of thing, the pattern can be
7 intermittent, and it doesn't have to persist all day. Usually
8 what happens with repeated exposures and more -- more timed
9 exposures is that it does become more consistent and daily.

11:32:16AM 10 And at this time, his wasn't every day, and it wasn't lasting
11 all day. Very shortly after this, the pattern changed and
12 that's what we understand about this in environmental medicine,
13 that there is a threshold that you could reach, and then after
14 that point, the symptoms really change and that's -- that is
11:32:34AM 15 indeed what happened in this case.

16 So the -- my comment about this was more saying this
17 is what I would expect there to be. So we're still watching to
18 see what happened, and then indeed that is what develops.

19 Q. Can you take a look at Tab 7.

11:32:58AM 20 Now, by Tab 7, he had been at the
21 school -- at -- that's dated March 31, 2015; correct?

22 A. Correct.

23 Q. And you write in Tab 7 of Exhibit 1 about the second --

24 THE COURT: Mr. Markham --

11:33:13AM 25 MR. MARKHAM: Yes.

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1 THE COURT: -- can you just stop for a minute. Marty,
2 can you just show him how to get that green light off.

3 MR. MARKHAM: Oh, you hit somewhere.

4 THE CLERK: The top right corner.

11:33:24AM 5 MR. MARKHAM: Top left, clear.

6 THE COURT: It's giving me a headache.

7 MR. MARKHAM: Okay. It's the radio waves, your Honor.
8 These are notorious for it.

9 THE COURT: I knew it. I knew it. Thank you, Marty.
11:33:32AM 10 Thank you.

11 MR. MARKHAM: Thank you.

12 BY MR. MARKHAM:

13 Q. So there we have it. And it says the persistent symptoms
14 are also interfering with his ability to focus on his
11:33:44AM 15 schoolwork.

16 His headaches are now interfering with his ability to
17 do his homework?

18 A. Yes.

19 Q. All right. Is that consistent with your thought that
11:33:51AM 20 these progress and get worse?

21 A. Yes, it is.

22 Q. Okay. And this was what seven weeks later?

23 A. Yes.

24 Q. All right. Now, take a look at Tab 8. And that is a
11:34:14AM 25 letter you sent to whom it may concern, dated April 14, about

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1 two weeks after you wrote the letter about the aggravating
2 symptoms.

3 And you give a diagnostic code of electromagnetic
4 hypersensitivity. The ICD-10 code is T78.8 idiopathic
11:34:40AM 5 environmental intolerance.

6 Do you recall -- do you recall that you wrote that
7 letter?

8 A. Yes.

9 Q. Do you recall why?

11:34:48AM 10 A. I believe it was needed in order to potentially have
11 something different happen in terms of the -- the school.

12 Q. Do you know whether they asked for it?

13 A. They did ask for a code.

14 Q. All right. Now, you gave -- why did you give this
11:35:07AM 15 particular code?

16 A. It's the -- the only code that fits it even partially.
17 There is no specific code for EHS at this time.

18 Q. Okay. Now, I learned this recently before this case, but
19 I've got to hand it to you, our profession doesn't have a
11:35:23AM 20 refuge called idiopathy, meaning idiopathic EHS and/or
21 idiopathic bleeding.

22 Could you tell us what this great escape valve is for
23 you folks in your profession.

24 A. Idiopathic means the exact cause of it has not been
11:35:40AM 25 determined yet.

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1 Q. Okay. And how is it that you can sit there under oath
2 with all your professional prestige on the line and say that,
3 in your opinion, the most probable cause is EHS from school
4 WI-FI when this is put into an idiopathic category, and I
11:36:00AM 5 gather idiopathic comes from the word idiot, which is Greek for
6 we all know; right?

7 A. Right.

8 Q. Explain that.

9 A. I think in medicine over the centuries, if you look at it
11:36:13AM 10 historically, there are many, many manifestations of illness
11 that we don't understand. And over time, and it may take
12 hundreds of years, we do finally understand the mechanism and
13 can describe it and understand it. So this is a new area of
14 medicine and of understanding hypersensitivity, and I think
11:36:35AM 15 it's important relative to this to realize that our world has
16 changed in the last 20 years, that the amount of EMFs that
17 we're all exposed to is radically different in the last 20
18 years than it was 20 years ago when people did not have cell
19 phones, did not have WI-FI in their house. So we don't know a
11:36:56AM 20 whole lot about it yet. We're really still learning, and the
21 studies are coming that are scientific in basis. So it's
22 not -- it's not unusual to not have a specific code to identify
23 a new -- a newly identified problem.

24 Q. Are there other newly identified problems that are, in
11:37:16AM 25 fact, problems, but they're lumped into this category as well?

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1 A. Sure. Chemical sensitivity could be in here.

2 Q. All right. Now, if somebody came to you and said, you
3 know, when I -- I work at a gas station, and every time I go to
4 pump gas, I feel nauseous and this or that happens to me.

11:37:35AM 5 What would you consider that the possibility might be,
6 if it didn't happen anywhere else?

7 A. That they have a sensitivity -- hypersensitivity to
8 gasoline exposure, the volatile chemicals that come from that.

9 Q. To what degree of medical certainty are you that certain
11:37:53AM 10 people are sensitive physiologically to fumes such as I
11 described?

12 A. I'm -- I'm quite certain that it exists.

13 Q. All right. But it's labeled under idiopathic?

14 A. That is correct.

11:38:08AM 15 Q. How about EHS, the same for that?

16 A. The same.

17 Q. Now, on Tab 9, this is a -- this is a note from a
18 Dr. Waugh.

19 Do you recall seeing this note at any time?

11:38:33AM 20 It's dated November 12, 2014. That would be -- that
21 would have been after you wrote your first letter; correct?

22 A. I did see it at some time, but I can't tell you exactly
23 when.

24 Q. Okay. It's something you would have seen before you wrote
11:38:49AM 25 your opinion?

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1 A. In the end, yes.

2 Q. All right. And this is the one that says, quote, "Mother
3 was not at all interested in considering this could be anxiety
4 or school phobia."

11:39:02AM 5 Do you see that?

6 A. Yes, I do.

7 Q. Okay. And again did you see any reason to pursue that?

8 A. I didn't. I didn't see any -- any evidence that that was
9 the case.

11:39:14AM 10 Q. Okay. Did you see the note of Dr. Lebel, the one that the
11 school told her to take her son to where Dr. Lebel indicates
12 that he was happy with no problems?

13 A. Yes.

14 Q. All right. All right. Tab 11, do you recall seeing this
11:39:52AM 15 note, a neurology visit from Dr. Pradeep Dinakar?

16 A. Yes.

17 Q. Okay. And you saw that, and you took it into account?

18 A. Yes.

19 Q. Did it change your opinion?

11:40:11AM 20 A. No.

21 Q. But you considered it?

22 A. Yes.

23 Q. All right. Let me ask you something. Do you ever ask
24 patients to keep diaries of when symptoms occur?

11:40:28AM 25 A. Yes.